IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8863 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER O & M DIVISION - Petitioner(s)

Versus

KANTIBHAI ANOPBHAI BARIA & 2 - Respondent(s)

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Appearance :

MR NK MAJMUDAR for Petitioner No(s).: 1.

MR BS NILAK for Respondent No(s).: 1, 2,3.
MRS NISHA M PARIKH for Respondent No(s).: 1, 2,3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 12/08/2005

ORAL JUDGMENT

1.0 The petitioner Board has challenged the award dated 15.04.1998 passed by Labour Court, Vadodara in Reference

(LCV) No. 872 of 1987, whereby the petitioner was directed to reinstate the respondents on their original post with continuity of service and 30% back wages.

2.0 The brief facts of the case are that the respondents herein were employed by the petitioner Board in its Store Department as daily wagers. In the year 1982, their services were terminated. Against the said order, the respondents raised a dispute, which, ultimately, culminated into a reference being Reference (LCV) No.872 of 1987 before the Labour Court, Vadodara. The Labour Court after hearing the parties passed the impugned award with the aforesaid directions. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. In the impugned award, the Labour Court has concluded that the petitioner had committed breach of the provisions of Sections 25(G) & (H) of the Industrial Disputes Act, 1947. The Labour Court has also recorded a finding that the petitioner Board has not maintained any seniority list for the daily wagers.

3.1 The aforesaid finding of the Labour Court cannot be

disturbed in view of the fact that Mr. Majmudar learned advocate for the petitioner was not in a position to show that the petitioner Board was maintaining seniority list for daily wagers. Such a finding could not be disputed in view of the fact that if seniority list was maintained as aforesaid, then the respondents would be entitled for re-employment or that they would have been permitted to continue as daily wagers as and when work was available. However, the respondents were deprived of the same on account of the said omission on the part of the petitioner Board. In above view of the matter, I am of the opinion that the Labour Court was completely justified in granting reinstatement to the respondents.

3.2 However, so far as the award qua grant of 30% back wages is concerned, the same could not have been granted in view of the fact that the appointment of the respondents was purely contractual. Moreover, in view of the principle laid down by the Apex Court in the cases of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176 and in the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137 [2005(5) S.C.C. pg.591], the respondents could not be said to be entitled for back wages. Hence,

the impugned award qua granting 30% back wages to the respondents is required to be quashed and set aside.

4.0 In above view of the matter, this petition is partly allowed. The impugned award of the Labour Court qua directing the petitioner to reinstate the respondents on their original post is confirmed; and, the direction qua granting 30% back wages is quashed and set aside. The petitioner Board is directed to grant seniority to the respondents in the seniority list of daily wagers and they shall be given work considering their seniority as on 01.10.2005. With the above observation, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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